

**WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES ~ JULY 9, 1998 MEETING [1:00 P.M.]
710 JAMES ROBERTSON PARKWAY
HEARING ROOM, FIRST FLOOR
ANDREW JOHNSON TOWER
NASHVILLE, TENNESSEE**

The meeting was called to order by Mr. Steve Adams, Chair.

Voting members in attendance:

Mr. Carter H. Witt

Mr. Bob Pitts

Mr. Jim Neeley

Mr. Othal Smith, Jr.

Mr. Jack Gatlin

*Mr. Witt had the proxy for Ms. Jimmie Kaye Corder

Nonvoting members in attendance:

Mr. Jerry Mayo

Ms. Jacqueline B. Dixon

Ms. Abbie Hudgens

Mr. Tony Farmer

Ex officio members in attendance:

Mr. Al Bodie, Commissioner of Labor

Mr. Neil Nevins, Assistant Commissioner of Commerce & Insurance
[designee for Commissioner Doug Sizemore]

Also present:

M. Linda Hughes, Executive Director

David Wilstermann, Statistical Analyst

After the addition of Mr. Tony Farmer's name to the draft minutes which had been previously supplied to the members, the minutes [as amended] of the May 1, 1998, Workers' Compensation Advisory Council meeting were unanimously approved.

A. SUBROGATION OF CASE MANAGEMENT COSTS

After referring the members to the Attorney General's opinion [regarding the two subrogation proposals which had been submitted to him] which had been briefly discussed at the May 1, 1998 meeting, the Executive Director reminded the Advisory Council that a single recommendation needed to be developed if the Advisory Council intended to pursue the issue. Ms. Hughes again briefly summarized the Attorney General's opinion regarding the constitutional problems with the present two proposals.

Ms. Hudgens remarked the Attorney General's opinion indicated the basic concept was constitutionally defensible if it could be altered to resolve the "right to a jury trial" issue. She encouraged the Advisory Council to go forward with the proposal and to develop one version which would meet the recommendation of the Attorney General. Mr. Adams noted he thought the constitutional problem could be easily solved.

Mr. Witt made a motion that Mr. Adams appoint a group to prepare a draft in concurrence with the attorney general's opinion and report back to the full council with a recommendation. The motion was seconded by Bob Pitts. Without objection, the following persons were appointed to serve on the subcommittee: Abbie Hudgens [to serve as chair], Jackie Dixon, Tony Farmer, and Bob Pitts. The subcommittee was requested to report back with a recommendation at the next meeting, August 27, 1998.

B. REPORT OF COMMISSIONER BODIE, DEPARTMENT OF LABOR

After Commissioner Bodie introduced the following members of the Department of Labor to Mr. Adams: Loren Frost [Director of Drug-Free Workplace Program]; Jim Farmer [newly appointed Director of Workers' Compensation]; Cliff Frensley [Legislative Liaison]; Sue Ann Head [Assistant Commissioner], he reported on the following topics:

1. Computer System

Since the last Advisory Council meeting in May, the company which had initially protested the bid process withdrew their protest and the company which had initially won the award with the low bid decided not to proceed with the project because they were not willing to give up their proprietary right to service the system for as long as the State used it. The contract has been awarded to Gulf Computer Systems, Inc. which is based in Massachusetts and the contract was signed July 2, 1998. Space is being provided for them within the Department and they are expected to arrive by the next week. They have workers' compensation experience in the states of Florida and Maryland. They will develop a customized system which will be owned and maintained by the State of Tennessee. Commissioner Bodie indicated the system should be in place within 18 months - January 2000.

2. Claims Handling Standards

There have been 12 complaints received by the Department concerning the claims handling standards. The complaints involve two specific areas of concern.

First, some employers, including Cracker Barrel and Federal Express, have complained about the requirement the First Report of Injury [C-20 form] must be signed by the employee as this is slowing the claims filing process because they take reports of injuries by telephone from various locations. According to Commissioner Bodie, the Department is working with the employers and has decided to hold the employer accountable to represent to the Department that the employee's signature is on file with the employer at some time prior to the conclusion of the claim.

Second, the other complaints are related to the 14 day time limit set for filing the Notice of First Payment of Compensation [C-22] or the Notice of Denial. There is nothing the Department can do about this requirement as it is established by law.

Mr. Mayo noted most insurance companies have an 800 number reporting system set up which completes the First Report and sends it on to the company. Therefore, the requirement that the First Report be signed by the employee is severely cramping the speed at which the insurance companies can get to the claims if they have to wait to receive a signed First Report. He urged the Department do whatever it could to resolve this problem.

During further discussion, Mr. Mayo indicated there are some insureds and carriers which believe benefits will not be started until a signed form is received. Mr. Adams noted the problem with the time limit is statutory and cannot be changed by the Advisory Council and the other problems can probably be cured by an educational process concerning the claims handling standards.

3. Statistical Data Form

Commissioner Bodie distributed to the Advisory Council the proposed rule and regulation promulgated by the Department to collect statistical data. The Department does not plan to have a public hearing on the rule unless someone requests a hearing. The Department requested the Advisory Council's input regarding the form.

Mr. Witt made a motion, which was adopted without objection, that the form be taken under advisement by the Advisory Council, with members to review the form and send any written comments, suggestions, or recommendations to the Executive Director by July 31, 1998. Mr. Adams suggested the Department have the proposed form reviewed by a professional from an organizational standpoint to determine if it is formatted in a manner to make it easy to use. Mr. Pitts requested the Department determine if other states have similar forms and, if so, that the Advisory Council be allowed to review those also.

C. DISCUSSION OF SUBCOMMITTEES [STATUTORY STUDY ISSUES]

Mr. Adams indicated his desire to appoint an Executive Subcommittee to be comprised of himself, Mr. Neeley and Mr. Witt to discuss administrative matters including the establishment of agendas, meeting dates and actions needed regarding the study issues subcommittees. Mr. Pitts made a motion, seconded by Mr. Smith, to appoint the Executive Subcommittee, which passed unanimously.

D. DISCUSSION OF RECENT SUPREME COURT OPINIONS

The Executive Director briefly discussed the cases recently decided by the Tennessee Supreme Court, Bomely v. Mid-America Corporation, et al. and Love v. American Olean Tile Company, et al., and the potential for legislation regarding the Second Injury Fund as a result of the decisions.

Ms. Hudgens requested information regarding the financial status of the Second Injury Fund and the potential impact of these decisions. Commissioner Bodie reported the Second Injury Fund paid approximately eight (8) million dollars in 1994; six (6) million dollars in 1995, and five (5) Million Dollars in 1996. For 1997, it is expected to be approximately three (3) to four (4) million dollars. He stated the Department expects some financial problems in the future as a result of these Supreme Court opinions.

A general discussion of the Second Injury Fund, its funding mechanism and current liabilities ensued. Following the discussion, Mr. Adams expressed his opinion the Advisory Council will probably be asked in the future to comment on the issue and he proposed the Advisory Council take the opportunity to gather information about the Second Injury Fund so it will be in a reasonably good position to deal with the issue, either as a result of legislation or because the Advisory Council wishes to deal with it. Without objection, Mr. Adams requested the Executive Director and staff to work with both Commissioner Bodie and Commissioner Sizemore to (1) develop and quantify the impact of the court decisions on the Second Injury Fund, (2) review the financial aspects of the issue, (3) determine the legal implications of the court opinions, (4) develop general information about the Second Injury Fund and (5) present a report to the Advisory Council at the September 25th meeting.

E. REPORT OF EXECUTIVE DIRECTOR

Ms. Hughes reported the bid process for the actuarial consulting services had been concluded and the winner of the bid is Willis Corroon Corporation. The bids for the five year term of the contract ranged from a low of \$42,000 to a high of \$135,000. The technical scores for Sedgwick and Willis Corroon were the same and, therefore, the awarding of the contract came down to price and Willis Corroon's bid was lower than Sedgwick's bid. She also reported Mr. Smith and Mr. Gatlin have been reappointed to the Advisory Council and that Dr. Bingham had tendered his resignation from the Advisory Council.

Mr. Pitts requested the Executive Director ask, to the maximum extent allowable under the contract, that Willis Corroon be prepared to address the status of the workers' compensation market in Tennessee, what is happening with reserving in the industry, what is happening with the assigned risk pool and to generally give a picture of the workers' compensation system. Mr. Adams noted, within the confines of the contract, Willis is to assist and serve the needs of the Advisory Council and if there are items which are needed outside the contract, those items could probably be obtained by an additional payment. Copies of the contract will be provided to members.

F. WORK PROGRAM FOR 1998-1999

Mr. Adams reviewed scheduled meetings and agenda items for each meeting:

August 27, 1998 [1:00 p.m.]:

- (1) NCCI presentation concerning the loss costs filing,
- (2) the report and recommendation concerning subrogation legislation, and
- (3) discussion of the proposed data form.

September 25, 1998 [10:00 a.m.]:

- (1) Willis Corroon's presentation concerning loss costs,
- (2) Advisory Council's adoption of a recommendation concerning loss costs,
- (3) Report on the Second Injury Fund [financial information, revenues and estimates of future liability and more detailed legal analysis of the impact of the Supreme Court decisions.]

The previously tentatively scheduled meeting on October 2, 1998 was cancelled. The November 20, 1998 meeting was retained as a tentative date, with the time changed to 10:00 a.m.

Mr. Adams also expressed his desire, after meeting with the Executive Subcommittee, to establish a schedule for meetings in 1999 as early as possible in order to assure a minimum of conflicts with schedules.

After a motion to adjourn by Mr. Witt, which was seconded by Mr. Pitts, the meeting was adjourned at 2:20 p.m.